

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CA 06-514

FEBRUARY 21, 2007

AUDRIANNA GRISHAM, P.A.
APPELLANT

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CIV-99-117]

V.

HONORABLE LANCE LAMAR
HANSHAW, JUDGE

CITY OF ENGLAND

APPELLEE

APPEAL DISMISSED

This is the second appeal in a case that arises out of a breach-of-contract action brought by appellant Audrianna Grisham, P.A., against appellee City of England. In the first appeal, we held in an unpublished opinion that the trial court erred in entering summary judgment in favor of City of England, and we reversed and remanded. *See Audrianna Grisham, P.A. v. City of England*, CA00-1449 (Sept. 12, 2001). Upon remand, the City of England again moved for summary judgment, which was again granted by the trial court. Audrianna Grisham, P.A., now appeals from the second summary judgment entered by the trial court, arguing that the order violated the law-of-the-case doctrine because it was inconsistent with our prior mandate. Appellant further contends that summary judgment was improper because there were genuine issues of material fact to be litigated. We cannot reach

the merits of this case because the appeal is not from a final, appealable order as required by Ark. R. App. P. - Civ. 2(a) and Ark. R. Civ. P. 54(b). We therefore dismiss the appeal for lack of finality.

On May 28, 1998, a contract was signed by Ms. Grisham on behalf of Audrianna Grisham, P.A., and by Joyce Lemons on behalf of the England Ambulance Commission and England Ambulance Service. The contract provided that England Ambulance Service agreed to retain Ms. Grisham as its attorney to collect unpaid and past due accounts and to pay Ms. Grisham according to a schedule. On April 19, 1999, Audrianna Grisham, P.A., filed a complaint against City of England, claiming entitlement to \$62,307.61 in damages as a result of City of England's termination of the contract without just cause. The contract was cancelled on February 5, 1999, and Ms. Grisham relied on the contractual provision that, if the client terminated the contract without just cause, Ms. Grisham was entitled to compensation on the basis of \$150.00 per hour for services rendered. At the time of termination, Ms. Grisham had been paid about \$16,000.00 under the terms of the agreement.

In its original motion for summary judgment, City of England challenged the validity of the contract on several bases, including: 1) chairperson Joyce Lemons could not bind the city to a contract without approval by the city council; 2) the statutory bidding process required by Ark. Code Ann. § 19-11-801 *et. seq.* (Repl. 1998) was not followed; and 3) Ms. Grisham's mother was the mayor of England and had at least an indirect interest in the profits of the contract in violation of Ark. Code Ann. § 14-42-107(b)(1) (Repl. 1998).

On August 31, 2000, the trial court entered summary judgment for the City of England on the basis that the contract “was improper from its inception.” In our September 12, 2001, opinion reversing and remanding that order, we held that even if the contract was improperly let, we could not say as a matter of law that the city had not been unjustly enriched by Ms. Grisham’s collection work.

After the case was remanded, City of England presented proof that the mayor and the city clerk were being paid by Ms. Grisham for work performed in connection with the contract. Relying on this proof, the trial court entered its second order granting summary judgment in favor of City of England, finding that the alleged contract was void *ab initio*.

However, the second summary judgment was not a final, appealable order. It failed to resolve the counterclaims brought by the City of England after this case was remanded to the trial court. In this regard, the City filed a counterclaim, first amended counterclaim, and second amended counterclaim, wherein it alleged that the contract was against public policy and prayed for judgment against the appellant for all sums paid to appellant, as well as punitive damages.

Arkansas Rule of Appellate Procedure - Civil 2(a) permits an appeal from a final order and other categories constituting exceptions not applicable here. The order must be final for this court to have jurisdiction, and thus it is a matter we will consider even though the parties do not raise it. *Haile v. Arkansas Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995).

Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Dodge v. Lee*, 350 Ark. 480, 88 S.W.3d 843 (2002). Although Rule 54(b) provides a method by which the trial court may direct entry of final judgment as to fewer than all of the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final and we must dismiss the appeal. *Id.* The fundamental policy behind Rule 54(b) is to avoid piecemeal appeals. *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002).

The order of summary judgment being appealed from in the present case did not contain a Rule 54(b) certification directing that a final judgment be entered as to only the appellant's complaint. The order failed to adjudicate appellee's counterclaim, and parties desiring to appeal from an interlocutory order must comply with Rule 54(b). *See French v. Brooks Sports Ctr., Inc.*, 57 Ark. App. 30, 940 S.W.2d 507 (1997). The appeal presented has complied with neither Ark. R. App. P. - Civ. 2(a) nor Ark. R. Civ. P. 54(b), and therefore it is dismissed.

Appeal dismissed.

GLOVER and MILLER, JJ., agree.